

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

18-CR-78-A

KEVIN MYSZKA,

Defendant.

**GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S
MOTION TO MODIFY CONDITIONS OF RELEASE**

The defendant, Kevin Myszka, through his attorney, Terrence M. Connors, Esq., filed a motion to modify the defendant's conditions of release. See Doc. No. 106. The UNITED STATES OF AMERICA, by and through its attorney, James P. Kennedy, Jr., United States Attorney for the Western District of New York, Brendan T. Cullinane, Assistant United States Attorney, of counsel, hereby files the government's response in opposition to the defendant's motion.

FACTS AND PROCEDURAL HISTORY

On January 19, 2017, the Drug Enforcement Administration ("DEA") arrested the defendant pursuant to an arrest warrant. On that same date, the defendant appeared before the Honorable Michael J. Roemer, United States Magistrate Judge, for his initial appearance. See Doc. No. 1. The defendant was charged with, between on or about November 3, 2016, and on or about December 3, 2016, knowingly, intentionally, and unlawfully possessing with the intent to distribute, and distribution of, cocaine, a Schedule II controlled substance, in

violation of Title 21, United States Code, Section 841(a)(1). Id. At the initial appearance, the government moved for detention of the defendant. See Doc. No. 2.

On January 31, 2017, the parties appeared before this Court for a detention hearing, wherein the government renewed its motion to detain the defendant. See Doc. No. 6. On February 1, 2017, the Court ordered the defendant released pursuant to an Order Setting Conditions of Release. See Doc. Nos. 7-8.

On September 20, 2017, the defendant filed an opposed motion for modification of conditions of release. See Doc. No. 25. On September 26, 2017, the Court granted the defendant's motion. See Doc. No. 27.

On December 14, 2017, the defendant filed an opposed motion to modify the conditions of release. See Doc. No. 32. On December 22, 2017, the Court granted the defendant's motion. See Doc. No. 36.

On February 12, 2018, the defendant filed an opposed motion to modify the conditions of release. See Doc. No. 41. On February 16, 2018, the Court granted the defendant's motion. See Doc. No. 43.

On March 14, 2018, the defendant filed an opposed motion to modify the conditions of release. See Docket No. 47. On March 30, 2018, the Court granted the defendant's motion. See Doc. No. 49.

On June 14, 2018, the defendant appeared before this Court for a change of plea hearing and entered a plea of guilty to Count 1 (possession with intent to distribute, and distribution of, cocaine) of the Information. See Doc. Nos. 62-64. At the conclusion of the change of plea hearing, this Court ordered the defendant to remain on bail in accordance with the terms and conditions previously imposed by Judge Roemer. See Minute Entry, dated 6/18/2018.

On August 6, 2018, the defendant filed an opposed motion to modify the conditions of release. See Docket No. 69. On August 7, 2018, the Court granted the defendant's motion. See Doc. No. 70.

On December 12, 2018, the defendant filed an opposed motion to modify the conditions of release. See Docket No. 80. On December 18, 2018, the Court granted the defendant's motion. See Doc. No. 83.

On March 14, 2019, the defendant filed an opposed motion to modify the conditions of release. See Doc. No. 84. On March 19, 2019, the Court granted the defendant's motion. See Doc. No. 87.

On September 19, 2019, the defendant filed an opposed motion to modify the conditions of release. See Doc. No. 97. On September 23, 2019, the Court granted the defendant's motion. See Doc. No. 100.

On December 6, 2019, the defendant filed an opposed motion to modify the conditions of release. See Doc. No. 106. As indicated herein, the government opposes the defendant's motion to modify the conditions of release.

ARGUMENT

The government opposes the defendant's instant motion for the following reasons. Between November 3, 2016, and December 1, 2016, the Drug Enforcement Administration ("DEA") conducted controlled purchases of cocaine from the defendant at his residence. See Doc. No. 64 at ¶ 5a. On January 19, 2017, the Drug Enforcement Administration ("DEA") arrested the defendant pursuant to an arrest warrant for his unlawful distribution of cocaine. Id. at ¶ 5d. On that same date, the DEA recovered a firearm in the defendant's residence's kitchen. Id. at ¶ 5e.

On October 13, 2017, the parties appeared before this Court after the defendant tested positive for the presence of a controlled substance in violation of the Order Setting Conditions of Release. See Doc. No. 28. At that time, the Court instructed the defendant that the Court would not tolerate any additional violations and imposed an additional condition of his release. Id. As a result, the defendant's conduct while on pretrial supervision has not been

exemplary and the government again opposes the defendant's motion to modify the conditions of release.

CONCLUSION

The government respectfully submits that, based on the defendant's violations of the Order Setting Conditions of Release, the Court should deny the motion to modify his conditions of release.

DATED: Buffalo, New York, December 10, 2019.

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